IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.13 of 1996
Date of decision: 27.11.2006

The Commissioner of Income Tax,Patiala

....Petitioner

versus

M/s Roadmaster Industries of India, Rajpura

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.
Mr. Sanjay Bansal, Advocate, for the respondent.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 11.7.1995 in ITA Nos.657 and 810/Chandi/90, for the assessment year 1988-89:-

> "1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the receipt on account of fluctuation in foreign exchange rate was includible in the gross total Income for computing deduction under section 80-HHC?
>
> 2. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in upholding the decision of the CIT(A) allowing deduction under section 32-AB on the machine assembled by the assessee when section 32-AB intends the use of investment only for purchase of new plant and machinery?"

The assessee showed receipts in the export turnover on account of fluctuations in the foreign exchange rate. The Assessing Officer took the view that the said receipts could not be treated as arising from business activity and the same could not be taken into account for working out deduction under section 80 HHC of the Income Tax Act, 1961 (for short, 'the Act'). Accordingly, gross total income of the assessee was reduced for purposes of deduction under section 80-HHC of the Act. This view was upheld by the CIT(A). The Tribunal, however, held that receipt on account of foreign exchange rate was a part of export turnover as it had arisen from activity incidental to the business of export and was in the nature of trading receipt and was not to be treated to be on capital account.

The assessee claimed deduction under section 32-AB of the Act in respect of new machines purchased/assembled. Claim was allowed in respect of new machines but was not allowed for machines assembled. The appellate authority accepted the claim in respect of assembled machines also which has been affirmed by the Tribunal.

We have heard learned counsel for the parties and perused the findings recorded.

We proceed to answer the questions referred as under.

Re:Q.No.1

From a perusal of question No.1, we find that the same has not been happily worded. To determine the same correctly, it should be read as under:

> "1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the receipt on account of fluctuation in foreign exchange rate was includible in the gross turnover for computing deduction under section 80-HHC?"

Relevant finding of the Tribunal on this question is as under:-

> "11. We have considered the facts and we are of the view that the receipt formed part of the turnover and shown as such, were part of trading receipt. There is nothing on record to show that the receipt was on account of capital account. Looking to the nature of the

> receipt, we agree with the learned counsel that it arose from an activity which was incidental to business. Ground No.6 stands allowed and receipts on account of fluctuation in foreign exchange rate and held to be includible in gross total income."

Learned counsel for the assessee in support of finding recorded by the Tribunal, relied upon judgment of the Hon'ble Supreme Court in **Sutlej Cotton Mills Limited v. CIT, West Bengal,** (1979) 116 ITR 1, wherein it was, inter-alia, observed:-

> "....It is true that a loss in order to be a trading loss must spring directly from the carrying on of business or be incidental to it as pointed out by Venkatarama Aiyar,J., speaking on behalf of this court in Badri Das Daga v. CIT, (1958) 34 ITR 10 (SC), but it would not be correct to say that where a loss arises in the process of conversion of foreign currency which is part of trading asset of the assessee, such loss cannot be regarded as a trading loss because the change in the rate of exchange which occasions such loss is due to an act of the sovereign power. The loss is as much a trading loss as any other and it makes no difference that it is occasioned by devaluation brought about by an act of State. It is not the factor or circumstance which causes the loss that is material in determining the true nature and character of the loss, but whether the loss has occurred in the course of carrying on the business or is incidental to it..."
>
> xx xxx xxx xx
>
> "This decision clearly laid down that where an assessee in the course of its trade engages in a trading transaction, such as purchase of goods abroad, which involves as a necessary incident of the transaction itself, the purchase of currency of the foreign country concerned, then profit resulting from appreciation or loss resulting from depreciation of the foreign currency embarked in the transaction would prima facie be a trading profit or a trading loss."

From a perusal of the scheme of Section 80-HHC of the Act, it is clear that deduction is relatable to net foreign exchange realisation. The definition of "export turnover", as contained in explanation (b) to Section 80-HHC(4) of the Act clearly defines the same to be sale proceeds

convertible in foreign exchange of any goods or merchandise exported out of India, which is extracted below:

> "(b) "export turnover" means the sale proceeds receivable by the assessee in convertible foreign exchange of any goods or merchandise to which this section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (62 of 1962)".

It is not disputed before us that in the present case, the amount received in excess on account of fluctuations in foreign exchange by the assessee was on account of export of goods out of India. This being the undisputed factual position, considering the scheme of the provision, there is no escape from the conclusion that the amount received by the assessee for export of goods on account of fluctuations in foreign exchange has to be treated as part of the gross turnover, resultantly entitling the assessee to the benefit of deduction under Section 80-HHC of the Act.

Accordingly, we answer the question referred against the revenue and in favour of the assessee.

Re:Q.No.2

It is not disputed that this question has been gone into by this Court in ITR No.118 of 1996, decided on 20.9.2006, **CIT, Patiala v. M/s. Hindustan Wire Products Limited.**

Accordingly, this question is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 27, 2006 (Rajesh Bindal)
'gs'/mk Judge